

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | MB Docket No. 07-198 |
| |) | |
| Review of the Commission's Program |) | |
| Access Rules and Examination of |) | |
| Programming Tying Arrangements |) | |

REPLY COMMENTS OF TUTV LLC

TuTv LLC ("TuTv"), a supplier of Spanish-language programming to multichannel video programming distributors ("MVPDs"), hereby replies to Comments filed in the above referenced proceeding¹ by certain MVPDs who have urged the Commission to impose restrictions on video program suppliers in the negotiation of carriage agreements. In support hereof, the following is shown.

By way of background, TuTv is a joint venture between Grupo Televisa, S.A. ("Televisa") and Univision Communications, Inc., formed in 2003 to distribute Televisa's Mexico-originated thematic channels in the U.S. This digital-only programming is culturally relevant to Spanish-speaking subscribers of domestic cable and broadcast satellite systems. TuTv launched five Spanish-language channels in May, 2003. TuTv's five channels consist of: ***De Película***, the top rated Spanish-language movie channel in Mexico; ***De Película Clásico***, a movie channel dedicated exclusively to black and white films from the Golden Era of Mexican film-making (1930's through 1950's); ***Telehit***, a youth-oriented channel featuring live

¹ *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, Notice of Proposed Rulemaking, 22 FCC Rcd 17791 (2007) ("NPRM").

programming, entertainment news, reality shows, concerts, interactive segments and music videos; *Ritmoson Latino*, a Latin music and lifestyle channel directed to young adults; and, *Bandamax*, a music and lifestyle channel dedicated entirely to regional Mexican music, featuring original programming, concerts and music videos.

Since its launch, TuTv has offered volume discount channel packages to MVPDs.² The channels are chosen by the MVPDs, with the requirement of a minimum carriage of three channels out of the five offered. This packaging has been essential to TuTv's ability to establish its new services and offset costs in a highly competitive video programming market.³ Such packaging not only has benefited TuTv with economies of scale, but also has benefited MVPDs with lower per-channel costs than would otherwise be the case, with the end result that Spanish-speaking subscribers reap the benefit of more diversity and choice in authentic Latino programming.

TuTv did not file in the initial round of comments herein since the thrust of the NPRM's questions about video program suppliers' carriage negotiations with MVPDs did not appear to be directed toward TuTv, still a relative newcomer in the video programming market. Indeed, a review of Comments filed herein confirms that more established video programming suppliers appear to be the focus of small and rural MVPDs' concerns. See, e.g., Comments of American Cable Association ("ACA") at pp. 5, 6, 11. Nonetheless, out of an abundance of caution, TuTv

² TuTv's channels are not offered in packages with other video programming or services owned by either of its 50% owners, Univision or Televisa. Moreover, TuTv does not request MVPDs to offer its channels on any tier other than the MVPDs' most widely distributed digital Spanish-language tier.

³ There are at least 76 channels of Spanish-language specialty programming available to domestic MVPDs, including both imported services and domestic signals offered entirely in Spanish. See Multichannel News, Guide to Hispanic TV Networks, October 1, 2007, <http://www.multichannel.com/article/CA6485543.html?q=Fox+Business+Network&q=&q=&q=&q=spanish+language+channels+listings>. At the same time, the total number of Spanish-language households subscribing to cable and satellite Spanish-language tiers is less than four million homes.

wishes to reply to those Commenters who urge the Commission to preclude the practice of channel packaging by all program suppliers in carriage negotiations with MVPDs.⁴ Such a broad-brush regulatory intervention by the Commission is without legal authority and, in any case, is unwarranted in the case of specialty programming directed at minority audiences.

With respect to the issue of legal authority, TuTv observes that the separate Comments filed herein by The Walt Disney Company (“Disney”), Fox Entertainment Group (“Fox”), Viacom, Inc. (“Viacom”) and NBC Universal (“NBC/U”) have cogently demonstrated that the Commission lacks statutory authority to preclude channel packaging by video program suppliers in their carriage negotiations with MVPDs. *See* Disney Comments at pp. 9-17, Fox Comments at pp. 32-38, Viacom Comments at pp. 24-32. NBC/U Comments at pp. 22-29. No convincing arguments to the contrary were provided by any MVPD Commenters. Thus, without any legal authority to regulate programming carriage negotiations, the Commission should take no further action except to terminate this proceeding.

Yet, even if the Commission were to determine that it has the authority to preclude channel packaging or, by the same token, to require stand-alone channel offerings by program suppliers, as certain MVPDs have urged, no justification for such a far-reaching regulatory intrusion into the video programming market is found in the record of this proceeding. TuTv’s specific case makes this point abundantly clear.

First, no allegations of unfair program carriage negotiations have been leveled against TuTv. Thus, no predicate exists for any regulatory restrictions to replace marketplace factors in TuTv’s carriage negotiations with MVPDs.

⁴ *See, e.g.,* Comments of ACA, Comments of OPASTCO, ITTA, WTA and RICA; National Telecommunications Cooperative Association Initial Comments; Comments of the Small Cable System Operators for Change; and, Comments of Coalition for Competitive Access to Content.

Second, the Commission must recognize that TuTv requires, as a relatively new supplier of digital programming, the freedom to offer volume discounts and channel packaging. Indeed, TuTv is already constrained by the extraordinary competition that exists among the plethora of Spanish-language services. *See* Note 3, *supra*. That is, the numerous Spanish-language programming options available in the marketplace ensures that an MVPD, regardless of its size and/or location, e.g., small and/or rural, has adequate bargaining power in carriage negotiations with TuTv and other such programming suppliers. In short, if an MVPD chooses to reject TuTv's minimum three-channel package, it may do so without concern for the availability of other Spanish-language programming alternatives.

Third, the ultimate public benefit of TuTv's discount packaging of Spanish-language cultural programming is clear. Such packaging serves to create opportunities for more diverse programming to become available to one of the fastest growing populations in this country. Thus, it is undeniable that there is no sound basis for the Commission to impose any restrictions upon programming suppliers such as TuTv in carriage negotiations with MVPDs.

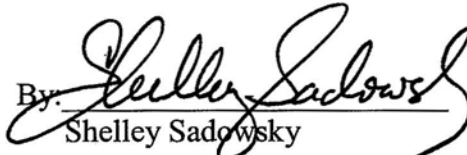
In sum, TuTv joins Disney, Fox, Viacom and NBC/U, among other commenters, who have plainly demonstrated that the case has not been made for Commission intervention in marketplace negotiations between video program suppliers and MVPDs. Simply put, there is no basis in either law or fact to support FCC regulation in this area.

WHEREFORE, for the reasons set forth above, TuTv urges the Commission to terminate this proceeding without taking further action.

Respectfully submitted,

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February 12, 2008